

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1094

Introduced by Assembly Member Conway

February 27, 2009

~~An act to add Section 2005 to the Business and Professions Code, relating to medicine. An act to amend Sections 1798.80, 1798.81, and 1798.84 of the Civil Code, relating to personal information.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1094, as amended, Conway. ~~Medical Board of California: physician and surgeon well-being. Disposal of personal information.~~

Existing law requires a business to take all reasonable steps to destroy, or arrange for the destruction of, a customer's records within its custody or control containing personal information that is no longer to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means. Existing law provides for specified civil remedies for a violation of these provisions.

This bill would, instead, require a business to take all reasonable steps to dispose, or arrange for the disposal, of an individual's records within its custody or control containing personal information when the records are no longer to be retained by the business by taking any of the actions described above. A violation of this provision would be punishable as a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide that a cause of action shall not lie against a business that comes into possession of abandoned records containing personal information and that disposes of those records in accordance with these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and vests the board with certain responsibilities.~~

~~This bill would authorize the board to establish a program to promote the issues concerning physician and surgeon well-being and would require the program to include, among other things, an examination and evaluation of existing wellness education for medical students, postgraduate trainees, and licensed physicians and surgeons and an outreach effort to promote physician and surgeon wellness. The bill would require the program to be developed within existing resources unless otherwise authorized in the annual Budget Act.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1798.80 of the Civil Code is amended to
2 read:

3 1798.80. The following definitions apply to this title:

4 (a) “Business” means a sole proprietorship, partnership,
5 corporation, association, or other group, however organized and
6 whether or not organized to operate at a profit, including a financial
7 institution organized, chartered, or holding a license or
8 authorization certificate under the law of this state, any other state,
9 the United States, or of any other country, or the parent or the
10 subsidiary of a financial institution. The term includes an entity
11 that ~~destroys~~ *disposes of* records.

12 (b) “Records” means any material, regardless of the physical
13 form, on which information is recorded or preserved by any means,
14 including in written or spoken words, graphically depicted, printed,
15 or electromagnetically transmitted. “Records” does not include
16 publicly available directories containing information an individual
17 has voluntarily consented to have publicly disseminated or listed,
18 such as name, address, or telephone number.

1 (c) “Customer” means an individual who provides personal
2 information to a business for the purpose of purchasing or leasing
3 a product or obtaining a service from the business.

4 (d) “Individual” means a natural person.

5 (e) “Personal information” means any information that identifies,
6 relates to, describes, or is capable of being associated with, a
7 particular individual, including, but not limited to, his or her name,
8 signature, social security number, physical characteristics or
9 description, address, telephone number, passport number, driver’s
10 license or state identification card number, insurance policy
11 number, education, employment, employment history, bank account
12 number, credit card number, debit card number, or any other
13 financial information.

14 *SEC. 2. Section 1798.81 of the Civil Code is amended to read:*

15 1798.81. A business shall take all reasonable steps to ~~destroy~~
16 *dispose*, or arrange for the ~~destruction~~ *disposal*, of a ~~customer’s~~
17 *an individual’s* records within its custody or control containing
18 personal information ~~which is~~ *when the records are* no longer to
19 be retained by the business by ~~(1) (a) shredding, (2) (b) erasing,~~
20 ~~or (3) (c) otherwise modifying the personal information in those~~
21 records to make it unreadable or undecipherable through any
22 means.

23 *SEC. 3. Section 1798.84 of the Civil Code is amended to read:*

24 1798.84. (a) Any waiver of a provision of this title is contrary
25 to public policy and is void and unenforceable.

26 (b) Any ~~customer~~ *individual* injured by a violation of this title
27 may institute a civil action to recover damages.

28 (c) In addition, for a willful, intentional, or reckless violation
29 of Section 1798.83, a customer may recover a civil penalty not to
30 exceed three thousand dollars (\$3,000) per violation; otherwise,
31 the customer may recover a civil penalty of up to five hundred
32 dollars (\$500) per violation for a violation of Section 1798.83.

33 (d) Unless the violation is willful, intentional, or reckless, a
34 business that is alleged to have not provided all the information
35 required by subdivision (a) of Section 1798.83, to have provided
36 inaccurate information, failed to provide any of the information
37 required by subdivision (a) of Section 1798.83, or failed to provide
38 information in the time period required by subdivision (b) of
39 Section 1798.83, may assert as a complete defense in any action
40 in law or equity that it thereafter provided regarding the information

1 that was alleged to be untimely, all the information, or accurate
2 information, to all customers who were provided incomplete or
3 inaccurate information, respectively, within 90 days of the date
4 the business knew that it had failed to provide the information,
5 timely information, all the information, or the accurate information,
6 respectively.

7 (e) Any business that violates, proposes to violate, or has
8 violated this title may be enjoined.

9 (f) *Every business, including any employee or agent thereof,*
10 *that knowingly disposes of records containing personal information*
11 *in violation of Section 1798.81 is guilty of a misdemeanor and*
12 *shall be punished, upon conviction, by a fine, by imprisonment in*
13 *the county jail not to exceed one year, or by both a fine and*
14 *imprisonment.*

15 (g) *A cause of action shall not lie against a business that comes*
16 *into possession of abandoned records containing personal*
17 *information and that disposes of those records in accordance with*
18 *Section 1798.81.*

19 (f)

20 (h) A prevailing plaintiff in any action commenced under
21 Section 1798.83 shall also be entitled to recover his or her
22 reasonable attorney's fees and costs.

23 (g)

24 (i) The rights and remedies available under this section are
25 cumulative to each other and to any other rights and remedies
26 available under law.

27 *SEC. 4. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*

36 ~~SECTION 1. The Legislature finds and declares all of the~~
37 ~~following:~~

38 ~~(a) One element in the protection of the health care consumer~~
39 ~~can be achieved by having healthy physicians and surgeons care~~
40 ~~for their patients.~~

1 ~~(b) Various studies document that stress factors in a physician~~
2 ~~and surgeon's job can significantly impact the effectiveness of~~
3 ~~patient care.~~

4 ~~(c) Studies indicate that physician stress has increased~~
5 ~~dramatically over the past 20 years, leading to physician and~~
6 ~~surgeon burnout or discontent, resulting in early retirement from~~
7 ~~practice or the pursuit of a different career.~~

8 ~~(d) Physician and surgeon's health and well-being is essential~~
9 ~~in order to maintain an adequate supply of physician and surgeons~~
10 ~~for the health care patients of California.~~

11 ~~(e) In light of these findings, it is essential that the Medical~~
12 ~~Board of California is given the authority to create a committee~~
13 ~~to provide broad oversight of these issues and address ways to~~
14 ~~encourage the continued well-being of physician and surgeons.~~

15 ~~SEC. 2. Section 2005 is added to the Business and Professions~~
16 ~~Code, to read:~~

17 ~~2005. (a) The board may establish a program to promote the~~
18 ~~issues concerning physician and surgeon well-being. This program~~
19 ~~shall include, but not be limited to, all of the following:~~

20 ~~(1) An examination and evaluation of existing wellness~~
21 ~~education for medical students, postgraduate trainees, and licensed~~
22 ~~physicians and surgeons.~~

23 ~~(2) A series of relevant articles published in the board's~~
24 ~~newsletter.~~

25 ~~(3) A consolidation of resources that promote physician and~~
26 ~~surgeon wellness.~~

27 ~~(4) An examination of incentives to encourage physicians and~~
28 ~~surgeons to become knowledgeable regarding the issues concerning~~
29 ~~their well-being.~~

30 ~~(5) An outreach effort to promote physician and surgeon~~
31 ~~wellness.~~

32 ~~(b) The program described in subdivision (a) shall be developed~~
33 ~~within existing resources unless otherwise authorized in the annual~~
34 ~~Budget Act.~~